

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF WASHINGTON

ERIC BOSTON
individually,

Plaintiff,

v.

KITSAP COUNTY, a Municipal
Corporation organized under
the laws of the State of
Washington and CONMED, INC.,
a Foreign Corporation doing
business in Kitsap County,
Washington.

Defendants.

NO.

COMPLAINT FOR VIOLATION OF
PLAINTIFF'S CONSTITUTIONAL
RIGHTS UNDER 42 U.S.C. §1983
AND FOR NEGLIGENCE

I. JURISDICTION & VENUE

1.1 Plaintiff, ERIC BOSTON, is, and at all relevant times was, a
resident of Snohomish County, Washington.

1.2 The defendant, KITSAP COUNTY, is a Municipal Corporation and
a political subdivision of the State of Washington, and is
located in Kitsap County, Washington.

1.3 Defendant CONMED, INC., is a Foreign Corporation registered in
the State of Maryland, doing business in and with KITSAP
COUNTY, Washington.

COMPLAINT FOR VIOLATION
OF CONSTITUTIONAL RIGHTS
UNDER 42 U.S.C. §1983 AND
FOR NEGLIGENCE

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1.4 All acts and omissions alleged in this complaint occurred in Kitsap County, Washington.

1.5 An action herein is a claim brought under 42 U.S.C. §1983, and states a Federal Claim.

1.6 Federal Courts have original jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1441 and 42 U.S.C. §1983. The court can exercise supplemental jurisdiction over other claims and other parties under 28 U.S.C. §1367(a), as the claims "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

1.7 Plaintiff has followed the claims notice procedures of RCW 4.96.020, and waited the required period of time before filing this action.

II. FIRST CAUSE OF ACTION - VIOLATION OF PLAINTIFF'S
CIVIL RIGHTS UNDER 42 U.S.C. §1983

2.1 On January 3, 2011, Defendant KITSAP COUNTY operated a public jail facility under color of law at 614 Division Street in Port Orchard, Kitsap County, Washington for housing incarcerated inmates for both pretrial and post conviction incarceration.

2.2 Defendant KITSAP COUNTY has a non-delegable duty to provide appropriate and necessary medical services to those incarcerated in its jail facility, to ensure the inmates'

1 health, welfare, and safety.

2 2.3 Defendant KITSAP COUNTY contracted with defendant, CONMED,
3 INC., to provide inmate healthcare services in an attempt to
4 meet its duty, at a flat rate of compensation, regardless of
5 medical needs of the inmate population, and the costs thereof.
6

7 2.4. The practical effect of this flat rate compensation package is
8 that the profit of CONMED, INC. declines for every pill,
9 procedure and expense provided for medical care of inmates.

10 2.5 CONMED, INC. has a policy, express or de facto, of refusing to
11 provide pain and other medications to inmates, and directs or
12 pressures its medical care providers to follow this policy.
13

14 2.6 Defendant CONMED, INC., hired and supervised numerous
15 employees, whose names are not presently known to plaintiff,
16 to act as agents on its behalf in fulfilling its contract with
17 defendant, KITSAP COUNTY.

18 2.7 The medical staff at the Kitsap County Jail frequently deals
19 with persons being arrested in all states of sobriety, and on
20 all forms of intoxicants and drugs, prescribed and otherwise.
21

22 2.8 The medical staff at the Kitsap County Jail has an obligation
23 to know how to address the needs of all inmates, and
24 particularly those with special needs due to drug dependency,
25 and those with chronic pain.

26 2.9 Plaintiff ERIC BOSTON was arrested during a traffic stop by
27 the Kitsap County Sheriff's Office on January 3, 2011 on a
28 misdemeanor charge of violation of a no contact order for

1 being peacefully in the presence of the protected person with
2 her consent, and was taken to the Kitsap County Jail for
3 processing to be held until he could be brought before a
4 court.

5
6 2.10 A court later made a determination to hold ERIC BOSTON on bail
7 pending trial, which bail he could not raise, and as a
8 consequence was a pretrial detainee until his plea of guilty
9 to the charge of Violation of No Contact Order and his release
10 from the Kitsap County Jail on February 14, 2011, and transfer
11 to the Snohomish County Jail.

12
13 2.11 Plaintiff, ERIC BOSTON also had a warrant from Snohomish
14 County for noncompliance with past sentencing conditions, and
15 was therefore held as a convicted person until he could be
16 delivered to Snohomish County for processing his alleged
17 probation violations.

18
19 2.12 Before his January 3, 2011 arrest, Plaintiff ERIC BOSTON had
20 a chronic spinal condition with back pain, and was lawfully on
21 opiate medications, Oxycodone and Oxycontin for that pain,
22 prescribed by his physician, Dr. Waltz. He had an opiate
23 dependency on his arrival at the Kitsap County jail as he had
24 been on those prescribed opiate medications for a considerable
25 period of time.

26
27 2.13 Before his January 3, 2011 arrest, Plaintiff ERIC BOSTON had
28 been diagnosed with Bi-Polar Mood Disorder, a chronic
condition, and was lawfully on medications to control that

condition, Lithium, as prescribed by his physician, Dr. Waltz.

2.14 Plaintiff ERIC BOSTON came to the Kitsap County jail with the valid, written prescriptions for those medications.

2.15 Defendant CONMED, Inc. following its policy of not providing medications due to cost considerations, refused to honor those prescriptions, and thereby forced Plaintiff ERIC BOSTON to undergo painful opiate withdrawal and illness, as well as increased back pain from his pre-existing chronic back condition. By failing to give him his Lithium, his Lithium levels fell below therapeutic dosage, and he had increase in his bi-polar symptoms, including manic euphoria, and depression, and inability to sleep.

2.16 On January 13, 2011, Plaintiff ERIC BOSTON suffered injury at the Kitsap County jail facility, when he tripped over an angle iron placed in the doorway to his cell, and fell down the concrete and steel stairs on his back, headfirst. This injury is more fully described in Count II of this complaint, and is incorporated by this reference.

2.17 As a result of this January 13, 2011 injury incident, Plaintiff ERIC BOSTON was transferred by ambulance while remaining in custody to Harrison Medical Center for evaluation and treatment. Harrison Medical Center performed an objective examination of Plaintiff ERIC BOSTON, provided him with 4 prescriptions: a corticosteroid to reduce inflammation, a muscle relaxer, and two opiate medications: Oxycodone and

Oxycontin. They released him back to the Kitsap County jail with discharge instructions to take the medications and seek a follow up appointment with his regular doctor.

2.18 Harrison Medical Center staff formed a diagnosis of Plaintiff ERIC BOSTON as Low Back Strain and Radiculopathy.

2.19 After the injury of January 13, 2011, as a direct result of the low back injury suffered, Plaintiff ERIC BOSTON could not control his bladder, and was urine incontinent. When he asked for accommodation for this infirmity, by provision of incontinence supplies and garments, his request was denied until very shortly before his release from the facility on February 14, 2011, when some incontinence undergarments were given him. For approximately a month, Plaintiff ERIC BOSTON suffered from humiliation and embarrassment at this condition. Plaintiff ERIC BOSTON was made to clean up his soaked bedding in the morning.

2.20 Plaintiff ERIC BOSTON had another fall on January 21, 2011, and an episode of incontinence, and was taken to Harrison Medical Center for care. On this occasion, Harrison Medical Center staff performed an examination of Plaintiff ERIC BOSTON, and found that he had poor rectal tone and loss of nerve function, diagnosed him with Cauda Equina Syndrome, and transferred him and his care to Harborview Medical Center.

2.21 On January 22, 2011, Harborview did a full medical workup of Plaintiff ERIC BOSTON, and made the following diagnosis: (1)

1 subtherapeutic lithium levels, (2) subregimen Sleep-Wake
2 Cycle, (3) possible bilateral vitreous detachments as a result
3 of his fall or transient visual obscurations and (4) possible
4 right sacroiliac radiculopathy, or nerve root compression.
5 Imaging studies verified disc dessication at L3/4, L4/5 and
6 L5/S1, a broad based disc bulge at L4/5 which causes mild
7 central canal stenosis, as well as an even milder bulge at
8 L5/S1.
9

10 2.22 Harborview Medical Center prescribed Lithium for Bi-Polar Mood
11 Disorder control, and opiate pain medications for pain
12 control, including Oxycodone. He was discharged back to the
13 Kitsap County jail with: (1) enough opiate medication to last
14 until seen by his primary medical doctor, Dr. Ronald Waltz, at
15 his next available appointment on Monday, January 24, 2011,
16 (2) Discharge Medication Instructions, including additional
17 prescriptions for opiate medications and (3) instructions for
18 follow up appointments, testing and general medical care. He
19 was also to be on fall precautions.
20
21

22 2.23 Despite the prescriptions for opiate pain medications and
23 directives of the physicians at Harrison Medical Center on
24 January 13-14, 2011 and at Harborview Medical Center on
25 January 22, 2011, with actual pain medications sent home with
26 Plaintiff ERIC BOSTON. When Plaintiff ERIC BOSTON was
27 returned to the jail facility on both January 14, 2011, and
28 January 22, 2011, CONMED, INC. countermanded the pain

1 medication prescriptions, and the corticosteroid medications,
2 and the muscle relaxers, and denied Plaintiff ERIC BOSTON the
3 benefits of such medications, in keeping with its cost
4 containment policies. In the presence of Plaintiff ERIC
5 BOSTON the jail representative told Harborview Medical Center
6 staff to not even write the pain medication prescriptions, as
7 they would not be filled anyway. The prescriptions were
8 written despite the admonition.
9

10 2.24 On February 2, 2011, counsel for Plaintiff ERIC BOSTON wrote
11 to jail administration complaining of the lack of pain
12 medication and lack of incontinence supplies, and asking for
13 remediation of this failure. On February 3, 2011 counsel
14 wrote to the Kitsap County jail asking for release of records
15 relating to Plaintiff ERIC BOSTON and his fall of January 13,
16 2011. On February 10, 2011, counsel wrote requesting the
17 contract for medical services, and particularly stating that
18 Plaintiff ERIC BOSTON was their client for a personal injury
19 claim.
20
21

22 2.25 On February 11, 2011, CONMED, INC. medical staff, believed to
23 be the CONMED, INC. Medical Director and the regular doctor,
24 in the presence of a jail guard, visited him in the jail
25 facility. The Medical Director advised that he would receive
26 pain medications and steroids, as requested in counsel's
27 letter, BUT ONLY IF HE SIGNED A STATEMENT THAT HE CAME TO THE
28 FACILITY WITH HIS CURRENT INJURIES. Plaintiff ERIC BOSTON

1 declined to sign it, as he insisted his lawyer should be
2 present, and because the statement was not true. The Medical
3 Director then presented to him a waiver of medical care, to
4 the effect that he declined medical assistance and pain
5 medications. The guard present told Plaintiff ERIC BOSTON he
6 had to sign it. Plaintiff ERIC BOSTON signed it under the
7 fear of punitive consequences if he refused to follow the
8 directive of the guard. The guard stated that if he did not
9 sign it, he would probably go to "the hole." Plaintiff ERIC
10 BOSTON never wanted to waive medical care, but was given the
11 alternative of getting appropriate care or waiving his legal
12 rights for his injury by signing a false statement.
13
14

15 2.26 Defendants KITSAP COUNTY and CONMED, INC. were deliberately
16 indifferent to the suffering of Plaintiff ERIC BOSTON by this
17 repeated medication denial, and by denial of the incontinence
18 supplies. The failure by Defendants KITSAP COUNTY and CONMED,
19 INC. staff to take timely, reasonable, inexpensive and
20 appropriate steps to ameliorate, mitigate and avoid the
21 effects of opiate withdrawal for a known incarcerated opiate
22 dependent, with a valid prescription, known to be in
23 withdrawal distress, and known to have chronic back pain,
24 constitutes deliberate indifference to his medical needs, and
25 was a violation of the rights of the plaintiff. Further,
26 promising care only if he compromised his claim against the
27 jail facility demonstrates deliberate indifference.
28

2.27 Deliberate indifference to the serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment of the United States Constitution to be free from cruel and unusual punishment, made applicable to the States by the Fourteenth Amendment. Plaintiff ERIC BOSTON, as both a post conviction detainee under the Snohomish County Warrant, and as a pretrial detainee on the Kitsap County charge, has also been denied Due Process of Law under the Fifth and Fourteenth Amendments in imposition of such punishment upon him. These deprivations were also in derogation and contrary to 42 U.S.C. §1983.

2.28 Plaintiff ERIC BOSTON is entitled to damages for medical and other special expenses, pain and suffering, and general damages proximately resulting from the acts of the defendants, including costs of suit and reasonable attorney fees under 42 U.S.C. §1988.

III. SECOND CAUSE OF ACTION- NEGLIGENCE

3.1 Plaintiff ERIC BOSTON re-alleges by this reference the facts contained in §2.1 through 2.28 of this complaint.

3.2 At the time of his incarceration with Kitsap County jail, Plaintiff ERIC BOSTON was told where he was to sleep and stay within the jail facility, and had no control over the condition of his housing.

3.3 On January 13, 2011, Plaintiff ERIC BOSTON was detained in the high security area of the facility because of an infraction of

1 the jail rules. This area is commonly called "the hole" at
2 the facility. He was required to be in his cell 23 hours a
3 day with one hour allowed out to stretch his legs. He was not
4 allowed interaction with other inmates. He was also allowed
5 out of his cell to get medications. His cell has a bed, a
6 sink and toilet.
7

8 3.4 At some time after the jail was constructed, to the time of
9 this incident, an additional security measure was taken to
10 alter the cells: an angle iron was secured to the floor in the
11 doorway to each cell, so that notes and other contraband
12 cannot be passed from one inmate to another by sliding it
13 under the door. The angle iron is approximately two inches
14 high spanning each doorway. It also serves as a tripping
15 hazard.
16

17 3.5 The doorway and angle iron crossing the doorway in the cell
18 Plaintiff ERIC BOSTON was mandated to use is approximately
19 four to five feet directly across from the top of a flight of
20 fifteen concrete steps leading to a common area below.
21

22 3.6 Causing and permitting the continued existence of the angle
23 iron tripping hazard near the top of the flight of stairs
24 creates an unreasonable risk of injury to those entering and
25 leaving the cell, and is negligence on the part of Defendant
26 KITSAP COUNTY and the Kitsap County Jail.
27

28 3.7 On January 13, 2011, Plaintiff ERIC BOSTON, during provision
of medications, tripped on the angle iron in the doorway of

1 his cell, and fell down the stairway, headfirst and on his
2 back. During the fall, he slid and struck each step until he
3 came to rest near the base of the stairs.

4 3.8 Plaintiff ERIC BOSTON was in immediate pain, had suffered
5 injury, and had lost control of his urine, wetting himself as
6 he lay there on the stairs.

7
8 3.9 911 Emergency Personnel were called, but, despite Plaintiff
9 ERIC BOSTON's protests, Kitsap County jail and CONMED, INC.
10 staff moved Plaintiff ERIC BOSTON from the stairs before
11 emergency staff could arrive, causing him additional pain.
12 When emergency personnel arrived to take him to the hospital,
13 he was flat on the concrete floor.

14
15 3.10 The guard who accompanied Plaintiff ERIC BOSTON to Harrison
16 Medical Center commented about how many people he has seen
17 trip on the doorway angle irons, and said he did not know why
18 they did not remove them.

19 3.11 As a direct result of the negligence of the Defendant KITSAP
20 COUNTY, Plaintiff ERIC BOSTON was injured, suffered, and
21 continues to suffer bodily injury and pain, emotional
22 distress, disfigurement, and loss of bodily function.

23
24 IV. PRAYER FOR RELIEF

25 For the reasons stated above, Plaintiff ERIC BOSTON prays for
26 the following relief:

27 4.1 For judgment against each of the defendants, jointly and
28 severally, for monetary special damages in an amount to be

determined at trial.

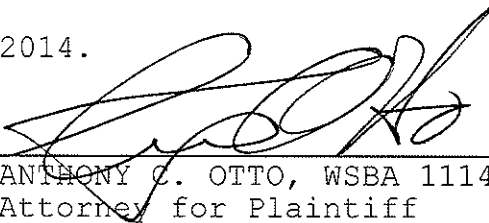
4.2 For judgment against each of the defendants, jointly and severally, for general compensatory damages in an amount to be determined at trial;

4.3 For judgment for punitive damages against each of the defendants, jointly and severally, in an amount to be determined at trial;

4.4 For attorney fees and costs authorized by statute, including reasonable attorney's fees pursuant to 42 U.S.C. §1988;

4.5 For such other relief as the court deems just.

Dated this 10th day of March, 2014.



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